

JUL 31 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

OCTAVIO URIBE MARTINEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-75546

Agency No. A95-301-295

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Octavio Uribe Martinez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order affirming without opinion an immigration judge's decision ("IJ") denying his application for cancellation of

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252.

We review de novo claims of due process violations in immigration proceedings, *Sanchez-Cruz v. INS*, 255 F.3d 775, 779 (9th Cir. 2001), and we dismiss in part and deny in part the petition for review.

Uribe Martinez's contention that the agency violated his due process rights by disregarding evidence and assuming facts not in evidence is not supported by the record and does not amount to a colorable constitutional claim. *See id.* at 930 (“[t]raditional abuse of discretion challenges recast as alleged due process violations do not constitute colorable constitutional claims that would invoke our jurisdiction.”).

Uribe Martinez's due process challenge to the BIA's decision is foreclosed by *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 848-53 (9th Cir. 2003) (holding that the Board's streamlining procedure comports with due process).

Uribe Martinez's contention that he was denied due process when the IJ refused to continue his hearing is unavailing, because he has not shown that a continuance would have affected the outcome of his proceedings. *See Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (requiring prejudice to prevail on a due process challenge).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.